Petition

Office-Supreme Court, U.S.
FILED
JUL 30 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-195

In the Supreme Court of the United States

OCTOBER TERM, 1981

J. EDWARD JONES,

Petitioner,

vs.

EVELYN S. JONES,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

WILLIAM HENNING RUBIN
188 West Randolph Street
Chicago, Illinois 60602
(312) 263-6780
Attorney for Petitioner

LAW OFFICES OF:
WILLIAM HENNING RUBIN
188 West Randolph, Rm. 722
Chicago, Illinois 60602
263-6780
Of Counsel

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

QUESTION PRESENTED FOR REVIEW

The questions are substantial. The Appellate Court, 2nd District of Illinois recently held in *in re Marriage of Ruth Cohn,* Petitioner Appellant, and *Stewart Cohn,* Respondent-Appellee that "a judgment for dissolution" without a proper determination of property disposition, custody and maintenance is "void" since the judgment of "dissolution" was entered without statutory authority and therefore void.

This decision will affect thousands of cases in Illinois; and the only recourse is to the Supreme Court of the United States.

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JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked pursuant to 28 U.S.C., Section 1253(3) and Rule 19 of the Supreme Court of the United States.

The Petitioner seeks an order of Court requiring the directing of the Supreme Court of Illinois to reverse the order of the Honorable Mary Hooton, Judge of the Municipal Court of Chicago, sitting "on loan" to the Circuit Court, Domestic Relations Division, granting maintenance

to the Respondent after a period in excess of 30 days following the entry of the decree of divorce, dissolution of marriage.

The threshold question is whether the judgment dissolving their marriage, but making no provision for support binds the litigants so that it is denied the jurisdiction to grant any relief for support after a period of 30 days, following dissolution of marriage.

The question is substantial. This court is called upon to determine whether or not a court can retain jurisdiction after a period of 30 days following the dissolution of the marriage in order to grant to the wife support, which was omitted from the decree at the time of its entry.

The decisions of the Illinois Courts are contrary to the provisions of Subsection A of Paragraph 1 of Rule 19 of the U. S. Supreme Court of subsection governing review of certiorari because the decisions of the Illinois Court in this case are contrary to the cases of *Maynard* v. *Hill,* 125 U.S. 190, 216 and *Barrett* v. *Failing,* 111 U.S. 423, 525.

STATEMENT OF THE CASE

J. Edward Jones, the husband, an attorney by profession, filed a bill for divorce in the Circuit Court of Cook County, Divorce Division. On December 20, 1978, the divorce was granted with no order for any property settlement or support at the time of the entry of the decree of dissolution.

More than 30 days elapsed from the date of the entry of the divorce decree to a hearing on maintenance; and on April 27, 1979, a judge sitting on loan from the Municipal Court of Chicago awarded support to the wife. No answer or counterclaim pursuant to Section 38 of the Civil Practice Act of Illinois was filed by Respondent to entitle her to any relief.

That the head of the divorce division of the Circuit Court of Cook County vacated that order of support on the grounds that the Chancellor hearing the merits of the divorce case *failed to consider* the proper elements to entitle "the wife" to *support and maintenance.*

The Honorable Charles Fleck, head of the divorce division, vacated the order of Judge Mary Hooton, who had no experience in divorce matters, only to be reversed by the Appellate Court of Illinois in the case entitled "Jones vs. Jones, No. 79-863." The Appellate Court held that the Honorable Mary Hooton, although she was only a judge of the Municipal Court, and was of the same judicial stature and of the same jurisdiction as the chief judge, Charles Fleck, therefore order of the Appellate Court was based on the theory that one judge cannot overrule the other judge of similar rank, even though the previous ruling is erroneous.

The Appellate Court reversed the ruling of the Honorable Charles Fleck concerning maintenance, despite the fact that the order was legally correct, but jurisdictionally could not be issued.

ARGUMENT

POINT I.

Is a judgment dissolving a marriage by reserving property disposition, maintenance and attorney's fees issues for future decision a final judgment within the meaning of Illinois Supreme Court rules?

That Section 413 of the Illinois Marriage and Dissolution of Marriage Act, Ill. Rev. Stat. 1979, Ch. 40, Par. 413(a) states specifically:

> "A judgment of dissolution of marriage or legal separation or of declaration of invalidity of marriage is final when entered subject to the right of appeal. An appeal from the judgment of dissolution of marriage that does not challenge the finding as to grounds does not delay the finality of the provision of the judgment which dissolves the marriage, beyond the time for appealing from that provision, and either of the parties may remarry pending appeal. An order directing payment of money for support or maintenance of the spouse or the minor child or children shall not be suspende.. or the execution thereof stayed pending the appeal."

Petitioner timely moved to vacate the judgment for support alleging the court had no authority to enter a judgment of dissolution before the maintenance, child support and other property rights were determined that the court had no authority to enter the judgment nunc pro tunc May 24, 1979; and that the court erred in not making an express written finding that there was no just reason for delaying enforcement or appeal. The motion was denied on January

31, 1980, and the trial court expressly found that there was no just reason for delaying enforcement of appeal.

The recent case of *In Re Marriage of Ruth Cohn, Petitioner Appellant, and Stewart Cohn, Respondent Appellee,* 2nd District, 90-148 made a determination that a judgment for dissolution without a proper determination of property deposition custody and maintenance "is void" since the judgment of "dissolution" was entered without statutory authority and therefore void. The case further held that such a judgment is "subject to affect at any time" the case of *Spears* v. *Spears,* 1977, 32 Ill. App. 3d 695 is cited in support of this contention, cited by the Illinois Supreme Court. The principle of that case is that the Court "lacked authority to enter the judgment. "That if the recent decision of *Cohn* v. *Cohn, Ibid.,* is to remain the law of this state, J. Edward Jones, the Petitioner is entitled to have the divorce decree vacated and held for naught.

That from a practical standpoint, Respondent is in a much better financial position than Petitioner, due to the fact that Petitioner filed a partition suit for and on behalf of Respondent's sister, as the result of which their father's property was sold at a partition sale and Respondent received approximately $90,000 in cash.

That these facts are only set forth for the purpose of convincing the court that it is not a question of protecting the wife, who might be penniless as a result of a divorce decree having been entered without proper provision being made for the support of the spouse.

On May 2, 1980, the Honorable Judge Allen Rosin entered an order appointing a sequestrator to enforce the support order and continued the matter until May 8.

Petitioner served notice of appeal pursuant to the Rules of the Supreme Court of Illinois on the theory that an

appeal from the appointment of a sequestrator grants and permits an interlocutory appeal as a matter of right.

This appeal was docketed as No. 80-1335.

A second appeal was docketed as 80-1516 and was the result of the following circumstances:

Despite the fact that a final decree had been entered on December 20, 1978, and no claim for support and maintenance had been filed pursuant to Rule 308 of the Rules of the Supreme Court, an order was entered for support of the Respondent.

On the day of the entry of the order a judge, Mary Hooton, of the Municipal Court of Chicago was "on loan" to the Domestic Relations Division of the Circuit Court.

The Judge had no previous knowledge or experience with Domestic Relations matters.

Petitioner had requested a continuance, since he is a lawyer of longstanding and had a case that was previously set for trial, and was unable to be present in Court.

Nevertheless, the Honorable Mary Hooton denied a continuance and Petitioner was required to engage another lawyer to represent him.

That Respondent falsely claimed that she was penniless, when in fact she was the half owner of two parcels of real estate.

That as a result of the efforts of Petitioner in a partition suit representing the sister-in-law and niece in the partition proceeding and all of the facts being a matter of record, Respondent received $88,500 in cash.

Under these circumstances, at the time the decree for support was entered, it was not as the result of a valid

determination, based on an evidentiary hearing, since the Respondent was in a much better financial position than the Petitioner.

The decision to award the Respondent any sum whatsoever is contested on the grounds of jurisdiction.

It is further contended that once the decree of divorce was entered when no order of support or division of property was provided for, Respondent's claims to Petitioner's property were waived.

The cases supporting this contention are *Clarke* v. *Lott*, 11 Ill. 105, 114-115; *Plaster* v. *Plaster*, 47 Ill. 290, 294-295; *Kelley* v. *Kelley*, 317 Ill. 104 and *Seuss* v. *Schuket*, 358 Ill. 27, 35; *Maynard* v. *Hill*, 125 U.S. 190, 216; *Barrett* v. *Failing*, 111 U.S. 423-525.

It has always been the established case law in Illinois that once a decree of divorce is finalized, the rights of the parties to each other's property are extinguished and each of the parties are fovever barred from maintaining a claim against each other.

The same ruling was adopted by this Court in *Maynard* v. *Hill*, 125 U.S. 190, 216 and *Barrett* v. *Failing*, 111 U.S. 423-525.

The Honorable Mary Hooton, Judge of the Municipal Court, being inexperienced in the field of Domestic Relations and completely uninformed as to the requirements to obtain support and maintenance, issued a blanket order for the payment of the sum of $686.00 per month.

When the divorce decree was entered, there was no reservation for a property settlement or maintenance and support. That the entry of an order more than 30 days after the decree of divorce is void, since the Court lacked jurisdiction.

POINT II

THE ORDER OF CHARLES FLECK, HEAD OF THE DIVORCE DIVISION, VACATING THE ORDER OF THE HONORABLE MARY HOOTON WAS A VALID ORDER, BASED ON EVIDENCE ADDUCED, TESTIMONY AND DOCUMENTARY, AND THE APPELLATE COURT WAS IN ERROR WHEN IT VACATED THAT ORDER FOR LACK OF JURISDICTION.

The Appellate Court was in error when it reversed the ruling of the Honorable Charles Fleck based on the theory that he was of similar rank and stature as that of Mary Hooton, even though he was chief justice of the Domestic Relations Division and could not vacate her order of support.

A chief judge of the Domestic Relations Division has supervisory powers and it is his duty and obligation when he sees that error has been committed to correct it.

The appointment of the sequestrator was a void order, since the ruling of the Honorable Mary Hooton to award support and maintenance was entered beyond the 30-day period and, in fact, a substantial amount of time had elapsed.

The court no longer had jurisdiction to award support and maintenance more than 30 days following the entry of the decree of divorce (separation).

The appointment then of the sequestrator was a violation of due process, contrary to the 14th Amendment to the Constitution since no provision was made for a hearing by the judge where testimony would be taken and evidence adduced to show the necessity for said appointment.

Due process of law guarantees no particular form of procedure, but it does protect substantial rights, after a decree of dissolution has been entered. *Sniadach* v. *Family Finance Corporation,* 397 U.S. 377, 23 L. ed. 2d 349.

Petitioner's contention is further supported by the case of *Weeks* v. *United States,* 232 U.S. 383, 532, 34 S. Ct. 341 (1914).

There was no basis for appointing a sequestrator when the order of support was being challenged.

One of the most important points for this court to decide is whether or not the Court can retain jurisdiction for support and maintenance months after a decree of divorce has terminated the rights of the parties (approximately four months later).

CONCLUSION

Petitioner contends that there has been a lack of due process of law for the following reasons:

1. Neither the Appellate Court nor the Supreme Court of Illinois granted an appeal as is provided by the Illinois Practice Act.

2. The Courts of Illinois have refused to recognize the well-established rule that after a decree of dissolution has been entered, the rights of the parties and the property of the other former spouse no longer exists. (See the cases above set forth, including two cases in this court.)

3. The Illinois Supreme Court has allowed the respondent relief even though no counterclaim is filed as required by Section 38 of the Illinois Practice Act.

4. The award of a $50,000 judgment for attorneys' fees and other attorney's fees under the above circumstances

is wholly unjust. The Supreme Court of the United States as recently held in the *Alyeska case, Alyeska Pipeline* v. *Wilderness,* 421 U.S. 420, 44 L.Ed. 2nd 141, that each litigant must pay for his own attorneys' fees.

Respectfully submitted,

WILLIAM HENNING RUBIN
Counsel for Petitioner

WILLIAM HENNING RUBIN
188 West Randolph, Rm. 722
Chicago, Illinois 60602
(312) 263-6780

Appendix

81-195

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188 West Randolph Street
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LAW OFFICES OF:
WILLIAM HENNING RUBIN
188 West Randolph, Rm. 722
Chicago, Illinois 60602
263-6780
Of Counsel

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

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In the
Supreme Court of the United States

OCTOBER TERM, 1981

NO.

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VS.

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Respondent.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT

ARTICLE III. CIVIL APPEALS RULES

Part A. Appeals From The Circuit Court

Rule 301. Method of Review

Every final judgment of a circuit court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. An appeal is a continuation of the proceeding. All rights that could have been asserted by appeal or writ of error may be asserted by appeal. No formal exception need be taken in order to make any ruling or action of the court reviewable.

ILLINOIS SUPREME COURT
CLELL L. WOODS, CLERK
Supreme Court Building
Springfield, Ill. 62706

(217) 782-2035

March 30, 1981

Mr. William Henning Rubin
Attorney at Law
188 W. Randolph St., S#714
Chicago, IL 60602

No. 54367—J. Edward Jones, petitioner, vs. Evelyn S. Jones, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Clell L. Woods
Clerk of the Supreme Court

In re the Marriage of	)	
	)	
J. Edward Jones and	)	No. 54367
	)	
Evelyn S. Jones	)	

ORDER

This cause coming on to be heard on the motions of J. Edward Jones (1) for leave to file a motion for reconsideration of this court's denial of his petition for leave to appeal; (2) for a stay of the issuance of the mandate of this court upon its order denying movant's petition for leave to appeal pending the filing of a petition for a writ of *certiorari* to the Supreme Court of the United States; and (3) to vacate the order entered in this cause on April 2, 1981 by the Honorable Allen T. Rosin, a judge of the circuit court of Cook County, remanding J. Edward Jones to the custody of the Sheriff, and the court having heard the arguments of counsel and being fully advised in the premises:

IT IS HEREY ORDERED

(1) that the motion for leave to file a motion for reconsideration of the denial of the movant's petition for leave to appeal is DENIED;

(2) that the mandate to be issued by this court upon its denial of the movant's petition for leave to appeal is stayed pending the prompt filing of a petition for a writ of *certiorari* to the Supreme Court of the United States and the disposition of said petition;

(3) that this cause is remanded to Judge Allen T. Rosin with directions to vacate that part of his order of April 2, 1981, which remanded J. Edward Jones to the custody of the Sheriff, and to order the Sheriff to release J. Edward Jones from custody.

/s/ Daniel P. Ward
Justice

ENTER: April 6, 1981

80-1335, 80-1516, 80-2171

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE MARRIAGE OF)
)
J. EDWARD JONES,)
)
Petitioner,)
)
and)
)
EVELYN S. JONES,)
)
Respondent.)

ORDER

This court having reviewed all pending motions and responses thereto and being fully informed;

IT IS ORDERED that the motion of Evelyn S. Jones, Appellee, be and the same is hereby granted and the appeals in cases numbered 80-1335, 80-1516 and 80-2171 be and the same are hereby dismissed.

DATED at Chicago, Illinois, this 13th day of November, 1980.

ENTER:

ORDER ENTERED Nov. 13 1980
/s/ Illegible
/s/ Illegible
/s/ Illegible